

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROBERT KUHN,

Plaintiff,

Case No. 3:04 CV 7434

-vs-

MARGARET BRADSHAW, Warden

MEMORANDUM OPINION
AND ORDER

Defendant.

KATZ, J.

This action was transferred to the United States Magistrate Judge for a Report and Recommendation. The Magistrate Judge filed his Report and Recommendation on April 20, 2006. No objections have been filed and the Court has reviewed said Report and Recommendation, the findings and recommendations contained therein, and the record in this case. The findings and recommendations of the Magistrate Judge are well taken and there are no legal points which would be arguable on their merits in an appeal of this case. Furthermore, the Court has determined sua sponte that no certificate of probable cause should issue in this case as any appeal would lack substantial merit.

It is therefore,

ORDERED, that the Report and Recommendation be, and hereby is, adopted as the Order of this Court. Petitioner's application for habeas corpus pursuant to 28 U.S.C. § 2254 is dismissed because federal review is barred due to Petitioner's failure to "fairly present" his claims to the state courts after exhausting his state remedies.

FURTHER ORDERED that under 28 U.S.C. §1915(a), an appeal of this case should not proceed *in forma pauperis* as it would not be taken in good faith.

FURTHER ORDERED that a motion for certificate of probable cause under 28 U.S.C. §2253 is hereby denied *sua sponte*.

s/ David A. Katz
DAVID A. KATZ
U. S. DISTRICT JUDGE